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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF ARIZONA**

9 United States of America,
10 Petitioner,

11 v.

12 Alis K. Harper, Brent R. Harper, and Brent
13 Harper, Inc.,
14 Respondents.

15
16 United States of America,
17 Petitioner,

18 v.

19 Alis K. Harper and Brent R. Harper,
20 Respondents.

CV-09-0703-PHX-JAT (Lead)
MC-09-00035-PHX-JAT (Cons.)

ORDER

21 This matter is before the Court on the United States' motion for order to show cause re:
22 contempt filed on July 17, 2009 (Doc. #21).

23 Civil contempt "consists of a party's disobedience to a specific and definite court order
24 by failure to take all reasonable steps within the party's power to comply." *Go-Video, Inc. v.*
25 *Motion Picture Ass'n of Am.*, 10 F.3d 693, 695 (9th Cir. 1993). Civil contempt sanctions are
26 "penalties designed to compel future compliance with a court order, are considered to be
27 coercive and avoidable through obedience, and thus may be imposed in an ordinary civil
28 proceeding upon notice and an opportunity to be heard." *Int'l Union, United Mine Workers of*

1 *Am. v. Bagwell*, 512 U.S. 821, 827 (1994). Thus, a party imprisoned for civil contempt “carries
2 the keys of his prison in his own pocket. He can end the sentence and discharge himself at any
3 moment by doing what he had previously refused to do.” *Gompers v. Buck’s Stove & Range*
4 *Co.*, 221 U.S. 418, 442 (1911) (citation and quote marks omitted).

5 The party alleging civil contempt must demonstrate the contemnor’s violation of a court
6 order by clear and convincing evidence. *United States v. Ayres*, 166 F.3d 991, 994 (9th Cir.
7 1999). Once a prima facie showing of contempt is made, the burden shifts to the alleged
8 contemnor to show why he or she should not be held in contempt. *United States v. Rylander*,
9 460 U.S. 752, 757 (1983); *Ayres*, 166 F.3d at 994. To avoid a contempt finding, the alleged
10 contemnor must “present some evidence to explain or justify his refusal” to produce the
11 requested information. *McPhaul v. United States*, 364 U.S. 372, 379 (1960).

12 The Supreme Court and the Ninth Circuit have held that a district court may properly
13 hold in contempt, by incarceration and otherwise, a party who refuses to comply with an IRS
14 summons after being ordered to do so. *See, e.g., Rylander*, 460 U.S. at 760-761; *United States*
15 *v. Wheeler*, 952 F.2d 326, 326-327 (9th Cir. 1991); *United States v. Brown*, 918 F.2d 82, 83-84
16 (9th Cir. 1990).

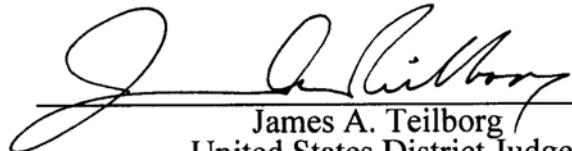
17 Respondents were required to appear at the IRS on July 14, 2009, and to give testimony
18 and produce documents (Doc. ##15, 16, and 17). The orders warned respondents that their
19 failure to comply with the orders could serve as grounds for finding them in contempt.
20 Respondents failed to appear at the IRS on July 14, 2009, failed to provide required testimony,
21 and failed to produce required documents. The Court accordingly ordered respondents to
22 appear on September 14, 2009, and show cause why they should not be held in contempt (Doc.
23 #22). Although respondents were served with the order (Doc. #23), respondents failed to
24 appear at the hearing (Doc. #24) and have not presented any evidence explaining or justifying
25 their refusal to produce the requested information.

26 Accordingly, the United States has shown that respondents have not complied with this
27 Court’s orders (doc. ##15, 16, and 17) and that such non-compliance constitutes contempt.
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1 Based on the foregoing and on the papers and records on file in this case, and good cause
2 appearing,

3 **IT IS ORDERED** that respondents Alis K. Harper, Brent R. Harper, and Brent Harper,
4 Inc., are in contempt of Court and warrants for their arrest will issue.

5 DATED this 14th day of September, 2009.

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9 James A. Teilborg
10 United States District Judge
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